

U. S. Application No. 10/717,865
Attorney Docket No. 2003B005/2
Reply to Final Rejection of September 14, 2006
Response dated October 5, 2006

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REMARKS/ARGUMENTS

Reconsideration of the claims in view of these amendments and remarks is respectfully requested.

Out of an abundance of caution, Applicant has re-submitted his claim and specification amendments presented in his submission of July 6, 2006. Applicant is reasonably sure the Examiner entered Applicants' July 6 amendments (note the Examiner's rejection under 25 U.S.C. § 103 of claims 50-51). However, given Applicant's failure to include Attachment A to the Declaration of Pal Arjunan with his prior submission, Applicant thought it prudent to include the amendments (and explanations thereof) with this Request for Continued Examination as well. The claims presented for reconsideration are claims 29-52. Claims 29 and 32-49 have been previously amended. Claim 52 is new. No new matter has been added.

TELEPHONIC INTERVIEW

Applicants thank the Examiner for the telephonic interview conducted on October 4, 2006. Based on that conversation, Applicants believe the current submission adequately replies to the Examiners' current Office Action.

AMENDMENTS TO THE DETAILED DESCRIPTION

The following amendments to the detailed description were made in this response:

Paragraphs [0004] and [00139] were amended to replace “PP” with “polypropylene.” “PP” is known in the art to mean “polypropylene,” thus, no new matter has been added. See M.P.E.P. § 2163.07(I) (“The mere inclusion of dictionary or art recognized definitions [is not] considered new matter.”).

Paragraphs [0007], [0008], [0009], [0044], [0045], [0064], [0065], [0070] and [0076] were amended to include 2-methyl-1,5-hexadiene as a potential diene component of the polymer composition. The diene 2-methyl-1,5-hexadiene was previously disclosed in the detailed description, however, it was mistakenly labeled as an α , internal non-conjugated diene. One of ordinary skill in the art would recognize that this was an error, and that 2-methyl-1,5-hexadiene is not an α , internal non-conjugated diene. One of ordinary skill in the art would also recognize that the appropriate correction would be that the diene in the

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polymer composition could be either 2-methyl-1,5-hexadiene or an α , internal non-conjugated diene. As one of ordinary skill in the art would not only recognize the error in the specification but would also recognize the appropriate correction, the amendments to these paragraphs are not new matter. *See* M.P.E.P. §2163.07(II) *citing In re Oda*, 443 F.2d 1200 (CCPA 1971) ("An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction.").

Paragraphs [0009] and [0064] were amended to replace 0.0 wt% to 20 wt% ethylene units with 0.0 wt% to 2.0 wt% ethylene units. This amendment is to correct a typographical error. Additionally, 2.0 wt% is contained within the previously disclosed range, thus no new matter has been added.

Paragraphs [0018], [0019], and [0021] were amended to replace "polymer" with "monomer." These amendments were made to clarify that the definitions in these paragraphs were referring to the monomeric units of the polymer composition and not the polymer composition as a whole. One of ordinary skill in the art would recognize that the use of "polymer" in these definitions was an error, and that "monomer" was the appropriate correction. Thus, no new matter has been added. *See* M.P.E.P. §2163.07(II) *citing In re Oda*, 443 F.2d 1200 (CCPA 1971).

Paragraphs [0049], [0066] and [0072] were amended to remove 2-methyl-1,5-hexadiene from the list of potential α , internal non-conjugated diene monomers. One of ordinary skill in the art would recognize that 2-methyl-1,5-hexadiene is not an α , internal non-conjugated diene monomer and that its placement in this list was a mistake. One of ordinary skill in the art would also recognize that the appropriate correction would be that the diene monomer could be either 2-methyl-1,5-hexadiene or an α , internal non-conjugated diene. As one of ordinary skill in the art would not only recognize the error in the specification but would also recognize the appropriate correction, the amendments to these paragraphs are not new matter. *See* M.P.E.P. §2163.07(II) *citing In re Oda*, 443 F.2d 1200 (CCPA 1971).

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Paragraph [00136] was amended to clarify that "HPPE" was an acronym for "high pressure polyethylene." "HPPE" is known in the art to mean "high pressure polyethylene," thus, no new matter has been added. *See* M.P.E.P. § 2163.07(I).

Paragraph [00153] was amended to clarify that "LPS" was an acronym for "low pressure separator." The meaning of LPS was clear from the heading, "Low Pressure Separator Operation," immediately preceding the paragraph, thus, no new matter has been added.

Paragraphs [0009], [0017], [0018], [0021], [0044], [0063], [0064], [0067], [0072], [0076], [00135], [00144], [00166], and [00168] were also amended to correct various typographical errors. No new matter was added.

The Abstract was amended to include 2-methyl-1,5-hexadiene as a potential diene component of the polymer composition. The diene 2-methyl-1,5-hexadiene was previously disclosed in the detailed description, however, it was mistakenly labeled as an α , internal non-conjugated diene. One of ordinary skill in the art would recognize that this was an error, and that 2-methyl-1,5-hexadiene is not an α , internal non-conjugated diene. One of ordinary skill in the art would also recognize that the appropriate correction would be that the diene in the polymer composition could be either 2-methyl-1,5-hexadiene or an α , internal non-conjugated diene. As one of ordinary skill in the art would not only recognize the error in the specification but would also recognize the appropriate correction, the amendments to these paragraphs are not new matter. *See* M.P.E.P. §2163.07(II) *citing In re Oda*, 443 F.2d 1200 (CCPA 1971).

AMENDMENTS TO THE CLAIMS

The following amendments to the claims were made in this response:

Independent claim 29 was amended to clarify that the diene unit in the copolymer composition could be either 2-methyl-1,5-hexadiene or an α , internal non-conjugated diene. Support for this change is present, *inter alia*, on pages 2, 3, 11, 20, 21, and 22 of the Application as filed.

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Claim 29 was also amended to correct a typographical error. It was amended so that the ethylene units claimed are from 0.0 wt% to 2.0 wt% and not from 0.0 wt% to 20.0 wt%. Support for this change is present, *inter alia*, on pages 2, 3, 11, 20, and 116 of the Application as filed.

Dependent claim 32 was amended to remove 2-methyl-1,5-hexadiene from the list of potential α , internal non-conjugated diene monomers.

Dependent claims 33-49 were amended to clarify that the copolymer claimed was the "polypropylene" copolymer of independent claim 29 as originally filed and not a "propylene" copolymer. Additionally, claims 44-49 were amended to indicate the units for the melt flow rate limitation. Support for this amendment is present, *inter alia*, in paragraph [0037] and Table 2 of the Application as filed.

Dependent claims 50 and 51 were added. These claims were added to clarify that 2-methyl-1,5-hexadiene could be present in the copolymer compositions in the amounts of from 0.0005 mol % to 10 mol % and 0.005 mol % to 10 mol %, respectively. Support for these claims is present, *inter alia*, on page 20 of the Application as filed.

REJECTION UNDER 35 U.S.C. § 103 AND DECLARATION UNDER 37 C.F.R. § 1.131

Claims 29-49 have been rejected under 35 U.S.C § 103(a) as unpatentable over U.S. Patent Application No. 10/476,646 to Lehmus et al. (hereinafter "Lehmus"). Claims 50-51 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lehmus in further view of U.S Patent Publication No. 2004-0242815 to Resconi, et al. (hereinafter "Resconi").

Applicant submits a copy of the declaration from Palanisamy Arjunan under 37 C.F.R. § 1.131 as submitted with their response of July 6, 2006, including the referenced Attachment A that was missing from Applicants' prior submission. The attached Declaration, signed by the sole inventor, antedates Applicant's invention prior to May 3, 2002. Therefore, Lehmus is not prior art and cannot be the basis of a 35 U.S.C. § 103(a) rejection.

The effective date of Lehmus is May 3, 2002, the date of its PCT filing. See M.P.E.P. § 715(III) citing *In re Hilmer*, 359 F.2d 859 (CCPA 1966) (The effective date of a domestic

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patent when used as a reference is not the foreign filing date to which the application for patent may have been entitled under 35 U.S.C. 119(a) during examination, but rather the effective filing date is determined under 35 U.S.C. § 102(e.).

As indicated in Mr. Arjunan's declaration, and the attachment thereto, Applicant described and reduced to practice a supported metallocene catalyst for polymerization of propylene and greater than propylene molecular weight comonomer under conditions similar to those of Lehmus at a time before the effective date of Lehmus. Further, the Examiner has specifically cited Examples 1-12 of Lehmus in rejecting the current Application. Applicant notes that catalysts and olefin polymerizations substantially similar to those of Lehmus are sufficiently described in Mr. Arjunan's declaration and the attachment thereto so as to meet the requirements of 37 C.F.R. 1.131(b) for antedating the Lehmus reference.

Applicant can claim priority to a nonprovisional application, U.S. Provisional Application No. 60/442,718, filed on January 27, 2003. Applicant's application can be afforded the priority date of the provisional application because the specification of the provisional application contains a written description of the invention and the manner of making and using the invention in such full, clear, concise, and exact terms, as to enable one of ordinary skill in the art to practice the invention claimed in the application. As this priority date is within one year of Lehmus' effective filing date, the Applicant's 37 C.F.R. § 1.131 declaration removes Lehmus as prior art with respect to Applicant's application.

CONCLUSION

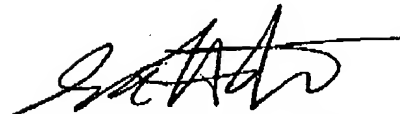
Applicant requests early and favorable reconsideration in the form of a Notice for Allowance.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, as this should expedite the prosecution of the application for all concerned.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2003B005/2).

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Respectfully submitted,



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Date

Shawn H. Foster
Attorney for Applicant
Registration No. 56,538

ExxonMobil Chemical Co.
Law Technology
P.O. Box 2149
Baytown, Texas 77522-2149
Phone: 281-834-2173
Fax: 281-834-2495